

PUBLIC MEETING MINUTES

December 11, 2008

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Neuwald called the meeting to order at 10:00 a.m.

Members Present

Karen L. Neuwald, Chair
Sally M. McKeag, Member
Robin W. Wesley, Member
Tiffany Rystrom, Member
Alice Dowdin Calvillo, Member

Staff Present

Tami Bogert, General Counsel
Les Chisholm, Division Chief, Office of the General Counsel
Bernard McMonigle, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

Chair Neuwald called the Board to order for a return to the open session of the October 27, 2008 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session on October 27, the Board has issued PERB Decision Nos. 1983-M, 1984-S, 1985-S, 1986, 1987-I, 1988-M, 1989-M, 1990 and 1991. During the month of December, three requests for injunctive relief (I.R.) were filed: in I.R. No. 560 (Siskiyou County Employees Association/AFSCME v. County of Siskiyou), the request was denied; I.R. No. 561 (Sonoma County Law Enforcement Association v. County of Sonoma), the request was denied; and in I.R. No. 562 (Siskiyou County Employees Association/AFSCME v. County of Siskiyou), the request was withdrawn. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Motion: Motion by Member Rystrom and seconded by Member Dowdin Calvillo to close the October 27, 2008 public meeting.

Ayes: Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

Motion Carried.

Chair Neuwald opened the meeting of December 11, 2008 and Member Rystrom led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member McKeag and seconded by Member Dowdin Calvillo that the Board adopt the minutes of the Public Meeting of PERB for October 27, 2008.

Ayes: Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

Motion Carried.

Comments From Public Participants

None.

Staff Reports

a. Administrative Report

Chief Administrative Officer Eileen Potter reported on a single item at today's meeting regarding the relocation of PERB's Los Angeles Regional Office (LARO). She reported that the Department of General Services was in the process of signing the final lease and that a tentative date for occupancy was Sunday, March 1, 2009. After inquiry by Member Dowdin Calvillo, Ms. Potter stated that PERB anticipates an actual move-in date of Saturday, February 28, or not later than the following Saturday, March 7. In conclusion, Ms. Potter noted that the entire process involving the LARO relocation took approximately four years.

Chair Neuwald acknowledged and stated her appreciation of Ms. Potter's perseverance and the LARO staff's patience throughout this lengthy process.

Regarding the LARO relocation, Member Rystrom wanted to know the difference in cost between the lease at the new location in Glendale versus the previous lease. She also wanted information regarding the term of the new lease.

Ms. Potter responded that with an additional 1,000 square feet of office space, there was an increase in rent. She stated that the rent increase was funded in PERB's 2008-2009 budget. The increase in space would allow for future expansion of staff, should that occur, since the greatest number of PERB cases are filed at the LARO. Ms. Potter stated that the term of the lease is 8 years, with 4-1/2 years firm.

Member Dowdin Calvillo stated it was her understanding that there were Americans with Disabilities Act (ADA) issues that could not be resolved at the existing space on Wilshire Boulevard. This in addition to other reasons made the move of PERB's Los Angeles Regional Office necessary. She also commented that no increase in PERB staff is anticipated at this time.

b. Legal Report

General Counsel Tami Bogert reported that the case processing and litigation reports had been distributed to the Board for its review. Ms. Bogert summarized the case processing report stating that since PERB's October 16 public meeting, 194 new cases were filed, 181 case investigations were completed, and 42 informal settlement conferences were held. Also as a noteworthy fact, Ms. Bogert reported that during the month of November, no requests for injunctive relief were filed at PERB.

Ms. Bogert next reported on litigation matters. She first reported on a PERB decision that had been appealed to the Second District Court of Appeal. (AFSCME Local 575 v. PERB; Los Angeles County Superior Court, Second Appellate District (Division Two (Los Angeles)), Case No. B211910.) This was a challenge to PERB Decision No. 1979-C brought by the American Federation of State, County and Municipal Employees. In PERB Decision No. 1979-C, the Board dismissed the complaint and underlying unfair practice charge finding that the Los Angeles County Superior Court did not violate the Trial Court Employment Protection and Governance Act through its discipline of a court employee. PERB will file the administrative record in this litigation case by mid-January and thereafter the briefing schedule will be set by the court.

In a second matter, Ms. Bogert reported that oral argument occurred last month in the Journey Charter School litigation. (California Teachers Association v. PERB; Journey Charter School, Fourth Appellate District (Division Three), Case No. G040106.) This case was appealed by the California Teachers Association with regard to PERB Decision No. 1945. PERB Decision No. 1945 dismissed allegations of interference and retaliation, finding that the Journey Charter School did not violate the Educational Employment Relations Act when it refused to renew employment contracts of three teachers. Ms. Bogert stated that, since oral argument occurred and the case thereafter submitted to the court, a decision from the court can be anticipated anytime within 90 days, i.e., on or before February 2009. Chair Neuwald acknowledged Regional Attorney Valerie Racho for her outstanding presentation of PERB's position in oral argument before the court in this matter.

As a final matter, Ms. Bogert reported on the essential-employee-strike litigation. She gave an update in City of San Jose stating that briefing had been completed and subsequently multiple amicus curiae briefs had been filed with the Supreme Court in this case. With the completion of briefing, oral argument will now be scheduled by the Supreme Court. (City of San Jose v. Operating Engineers Local Union No. 3, California Supreme Court, Case No. S162647, California Court of Appeal, Sixth Appellate District, Case No. H030272, Santa Clara County Superior Court, Case No. CV064707.)

In response to an inquiry by Chair Neuwald about whether oral argument can be waived by the Supreme Court, Ms. Bogert stated that oral argument is scheduled and presented in most of the civil cases that are reviewed by the Supreme Court.

Member Rystrom asked Ms. Bogert about the number of charges currently filed versus the number of charges filed at this same time last year. She also wanted to know if there was an increase in charges filed due to the financial problems experienced by government entities at this time.

Ms. Bogert responded that she did not have the charge filing statistics readily available and would report that information at a subsequent time. She stated that, with regard to increased charges due to current fiscal problems, PERB had not identified any trends or significant increases at this time.

On behalf of the administrative law judges (ALJs), Chief ALJ Bernard McMonigle thanked Chief Administrative Officer Eileen Potter for her perseverance and work in the relocation of PERB's Los Angeles Regional Office. He acknowledged the quality of the hearing room to be set-up in that regional office, which is to be similar to the room designed at PERB's Sacramento Office.

Mr. McMonigle then reported on the activities in the Division of Administrative Law. He stated that the ALJs have 20 decisions to write and 55 cases assigned for formal hearing. Of those 55 cases assigned, 20 are in Sacramento, 11 in Oakland and 24 are in Los Angeles. He noted that the caseload in Sacramento had increased and that trend is expected to continue with the expiration of State contracts and fewer unfair labor practices being deferred to the grievance and arbitration procedures. Mr. McMonigle concluded stating that within the division, for the past six years, the average number of days to issue a decision has been approximately 46 days. He anticipated that this average would decrease to 30 days by the end of this month.

Member Wesley inquired about how far out cases were being scheduled for formal hearing. She noted a time when the date for hearing had been set further than PERB's normal timelines for setting hearing dates after the informal settlement conference is held.

Mr. McMonigle responded that in Sacramento and Oakland cases are being set for formal hearing in February and March. Without a travel budget for the ALJs from the other regional offices to assist with the caseload at LARO, hearings in that region are being scheduled in April and May. He described alternative means of handling cases are being pursued. He assigned to himself two cases from LARO where the parties agreed to stipulate to the facts of the case and therefore a formal hearing was not necessary. In another LARO case, ALJ Cloughesy was using equipment at the State Personnel Board (SPB) offices in Sacramento and Los Angeles, to take the necessary witness testimony via video. Mr. McMonigle stated that another method being explored involved the reassignment of cases. Parties are notified when hearings are scheduled at LARO that there is a possibility of reassignment. Under this method, after the formal hearing is held and

completed by a LARO ALJ, the case is reassigned and the record transferred to another ALJ in the Sacramento or Oakland Regional Office for decision writing.

Chair Neuwald acknowledged and expressed appreciation to PERB staff for coming up with creative ways to complete tasks in a way that meets the needs of the parties, but also recognizes current fiscal constraints. She also expressed appreciation to SPB for allowing PERB to use its resources.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported on one legislative matter, which affects PERB jurisdiction, that was introduced this week in Special Session, SBX1 14 (Benoit). SBX1 14 is intended to amend both the Education Code and the Higher Education Employer-Employee Relations Act to make it easier for public school and higher education employers to contract-out for non-instructional services.

Motion: Motion by Member Wesley and seconded by Member McKeag that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be received.

Ayes: Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

Motion Carried.

Old Business

None.

New Business

None.

General Discussion

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through February 5, 2009 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Motion: Motion by Member Dowdin Calvillo and seconded by Member Rystrom that there being no further business, the meeting be recessed to continuous closed session.

Ayes: Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.
Motion Carried.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Karen L. Neuwald, Chair